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STATE OF ALABAMA

SEP 25 1989

Honorable Clarence F. Rhea  
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Municipalities -- Fire Protection  
Districts

Where voters of City of Attalla have previously approved adoption of Amendment 445 establishing fire districts, Attalla City Council may by resolution become subject to Amendment, resulting in automatic levy of 3 mill tax for fire protection purposes in city.

Tax for fire protection authorized by Amendment 445 in Etowah County to be assessed and collected same as other ad valorem taxes.

Dear Mr. Rhea:

This opinion is issued in response to your request on behalf of the Attalla City Council for an opinion from the Attorney General.

QUESTION 1

May the City of Attalla by resolution or ordinance levy an ad valorem tax for fire protection within the City of Attalla in the amount of 3 mills or \$.30 per \$100 and such levy be valid although no election is held?

FACTS AND ANALYSIS

Amendment No. 445, Constitution of Alabama 1901, authorizes the Etowah County Commission to establish fire districts within the county. The Amendment provides that any corporate municipality may request through resolution of its governing body to become subject to the provisions of the Amendment upon the approval of the additional tax levied therein by a majority of the qualified electors of the corporate municipality. The Amendment further provides:

Prior to the levy of the fire protection tax in a fire district, there shall be submitted to the electors of the district, at a special election called for that purpose in the district, the question of whether the said tax shall be levied, and the said tax shall be authorized at such election by a majority of the qualified electors within any particular fire district of the county or corporate municipality therein who vote at such election; provided further, that if a majority of the qualified electors of any of the fire districts participating in the election on the ratification of this amendment shall vote for the ratification of this amendment, then the approval of this amendment as expressed by the vote in said district in favor of its ratification shall, of itself, authorize the levy and collection of the tax for fire protection purposes in that fire district . . . .

Amendment 445 contemplates that an election be held regarding its adoption. If the electors in a particular fire district vote in favor of its adoption, then the Etowah County Commission may in its discretion establish fire districts in the county (excluding corporate municipalities). The governing bodies of the corporate municipalities may by resolution become subject to the Amendment. Therefore, if the electors in the City of Attalla have previously approved the adoption of the Amendment by a majority vote at an election held for that purpose, then the governing body of the City of Attalla may by resolution become subject to the provisions of the Amendment, which would mean the automatic levy of a 3 mill tax for fire protection purposes.

#### CONCLUSION

If the qualified voters residing in the City of Attalla have previously approved the adoption of Amendment No. 445, then the governing body of the City of Attalla may now or at any time in the future become subject to the provisions of the Amendment by resolution, which would have the effect of levying a 3 mill tax for fire protection purposes in the City of Attalla.

#### QUESTION 2

Is it proper for the 3 mill ad valorem tax to be assessed by the tax assessor and collected by the tax collector for the year commencing October 1, 1989?

FACTS AND ANALYSIS

Amendment No. 445 provides:

The fire protection tax levied herein shall be based upon the value of real and personal property assessed by affected property owners, as shown on the records of the tax assessor of Etowah County, Alabama, and shall be assessed and collected as are all ad valorem taxes in the county.

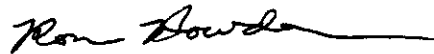
Ad valorem taxes are assessed as of October 1, the first day of the tax year, and collected beginning on the following October 1. Quarterly Report of the Attorney General, Vol. 115, p. 88. Therefore, if the Attalla City Council passes a resolution under which the city becomes subject to the provisions of Amendment 445 prior to October 1, 1989, the tax assessor will be authorized to assess the taxes for the 1990 tax year on which the tax collector will begin collections beginning October 1, 1990.

CONCLUSION

The tax levied for fire protection purposes pursuant to Amendment 445 is required to be assessed by the tax assessor and collected by the tax collector in the same manner as other ad valorem taxes.

Sincerely,

DON SIEGELMAN  
Attorney General  
By-



RON BOWDEN  
Assistant Attorney General

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